Supreme Court, U. S.
FILED
MAY 27 1977
MICHAEL RODAK, JR., CLERK

# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1462

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

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## REPLY BRIEF ADDRESSED TO ARGUMENTS FIRST RAISED IN THE BRIEF IN OPPOSITION

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In Propria Persona

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### I

### RULE 23, UNITED STATES SUPREME COURT

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Petitioner abided by Rule 23 of this this United States Supreme Court in appealing, "Appendix to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respondents States:

> "The Memorandum Opinion of the United States Court of Appeal for the Ninth Circuit is set forth in toto in Petitioner's Appendix to Petition for a Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit. Petitioner not having properly appealed, it is submitted that Opinion should be dispositive and this Court should deny the Writ."

Rule 23, United States Supreme Court, states; in pertinent part:

> "1. The petition for writ of certiorari shall contain in the order here indicated--
> (a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in subparagraph (i) hereof...
> (i) There shall be appended to the petition a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including all opinions of courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, opinions in companion cases. The opinions shall include the caption showing the name of the court or agency issuing the same and the title and numbers of the case and the date of their entry. If whatever is



> "required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented."

Therefore, Petitioner has abided by the above Rule 23 of this United States Supreme Court in appealing the Appendix to Petition for a Writ of Certiorari. The Memorandum Opinion should NOT be dispositive, and, this Court should NOT deny the Writ because the Petition for a Writ of Certiorari has been properly appealed in accordance with the above Rule 23 of this United States Supreme Court.

## II

## MATERIAL EVIDENCE WARRANT JURISDICTION UNDER U.S. TITLE 42, SECTION 1981, AND, CALIFORNIA CIVIL CODE, SECTION 337(1).

---

Respondents states:

> "Respondents submit that the only issue to be decided is whether Petitioner is barred by the Statute of Limitations."

Petitioner has substantiated in the Petition for a Writ of Certiorari, that there was in fact a Written Contract between Respondents and the United Transportation Union, in which all employed bus operators, including Petitioner, were members. Respondents deducted a specific amount of each employed bus operator's earnings each month to be paid to the Union for membership, in order to be protected by the Written Contract.

A Copy of this Written Contract is in the Clerk's Transcript filed and docketed in the United States Court of Appeals, Ninth Circuit, as Civil Case No. 76-2285, on pages 29 through page 44.

Petitioner has substantiated in Petition for a Writ of Certiorari, that there was in fact, Racial Discrimination involved which brought about a Discriminatory Breach of the Written Contract, when Petitioner was finally discharged on February 8, 1971.

The purpose of the Written Contract, in pertinent part:

> "B. Provide for the fair treatment of said employees." (CT 29).

Therefore, Article 27, Section (e), of the Written Contract, which is quoted in Petitioner's Petition for a Writ of Certiorari, on pages 34 and 67 that was discriminatorily breached by a serious act of unfair treatment when Petitioner (Black) was finally discharged on February 8, 1971, for performing dual employment; while four (4) White Bus Operator Employees (Caucasian) were NOT discharged, and, has been permitted by Respondents to continue performing the dual employment.

Therefore, as a result of the discovery of material newly discovered evidence, Petitioner filed a Motion For Leave To File Amended Complaint, pursuant to Rule 15(b), Title 28, Federal Rules of Civil Procedure, to conform to the evidence, and establish jurisdiction pursuant to Title 42, U.S.C., Section 1981, and



and 337(1), C.C.P., based upon following material evidence:

1. MATERIAL EVIDENCE OF RACIAL DISCRIMINATION.

2. MATERIAL EVIDENCE OF A WRITTEN CONTRACT.

3. MATERIAL EVIDENCE OF A DISCRIMINATORY BREACH OF A WRITTEN CONTRACT.

Respondents have submitted to this by quoting a United States Court of Appeals, Ninth Circuit's Ruling in Griffin v. Pacific Maritime Association, as follows:

> "(1) The pertinent provisions of the 1866 Civil Rights Act prescribe no period of limitations; hence, the most nearly analogous state period of limitations applies. See, e.g., United Automobile Workers v. Hoosier Cardinal Corp., 283 U.S. 696, 86 S. Ct. 1107, 16 L.Ed.2d 192 (1966); Young v. International Tel. & Tel. Co., 438 F.2d 757, 763 (3d Cir.1971).
>
> "The most most nearly applicable California statutes prescribe limitation periods not exceeding four years. See Cal. Code Civ. P. 337, 338(1) (West 1972 Supp.) & 343 (West 1954). If any of these statutes govern the longshoremen's 1981 and 1985 actions, the filing of the complaint was decidely tardy." Griffin v. Pacific Maritime Association, 478 F.2d 1118, 1119 (1973).

The California Statutes listed in the above Griffin v. Pacific Maritime Association, by the Court of Appeals are Sections 337, 338(1), and 343; and, Petitioner has checked each one out as instructed in the above decision.

California Code of Civil Procedure, 338(1), states, as follows:

> "1. An action upon a liability created by statute, other than a penalty of forfeiture."

The California Courts, in 1955, held:

> "A liability created by statute is one in which no element of agreement enters. It is an obligation which the law creates in the absence of an agreement. (16 Cal. Jur. p. 143, 76; 53 C.J.S. p. 1051, 83; Higby v. Calaveras County, 18 Cal. 176, 179-180; Churchill v. Pacific Imp. Co., 96 Cal. 490, 492-493 (31 p. 560); Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969, 976." Gardner v. Basich Bros. Const. Co., 44 Cal. 2d 191 (1955).

The United States Court of Appeals, Ninth Circuit, in 1962, held:

> "The California Courts have held that an action is based 'upon a liability created by statute', within the meaning of section 338(1), if the liability would not exist but for statute. Or, conversely, an action is not based 'upon a liability created by statute' if the right is



> one which would exist at common law in the absence of statute." Smith v. Cremins, 308, F.2d 187 (1962).

Petitioner has substantiated without a doubt in Petitioner's Petition for a Writ of Certiorari, that there was in fact a Written Contract, and, as a result of the result of the final discharge of Petitioner (black) by respondents on February 8, 1971; created a Discriminatory Breach of the Written Contract.

Based on the above, this eliminates 338(1) C.C.P., as the most appropriate California State Law controlling the Statute of Limitations in Petitioner's Cause of Action.

This now leaves California Statutes 337 and 343. Both California Statutes have four-year statute of limitations.

To further check, 343 C.C.P., which states as follows:

> "Four years; relief not otherwise provided for."

This now leave only 337 C.C.P., to be checked out. Section 337 C.C.P., states:

> "337. Four years; written contracts; exception, book accounts; account stated based upon account in writing; balance of mutual; open and current account in writing; rescission of written contract."

Section 337(1) C.C.P., in pertinent

part:

> "Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in section 336a of this code..."

Based upon the above, the California Code of Civil Procedure, Section 337(1), is the most appropriate California State Law controlling the Statute of Limitations in Petitioner's Title 42, U.S.C., Section 1981 Cause of Action, which is four (4) years. Also, the Courts Rulings cited in Petitioner's Petition for a Writ of Certiorari, on pages 35, 36, 37, and 38, very strongly and very soundly support 337(1) C.C.P., as the most appropriate California State Law controlling the Statute of Limitations in Petitioner's Cause of Action, which is four (4) years.

Petitioner was finally racially discriminatorily discharged by Respondents on February 8, 1971. Petitioner filed the Original Conplaint in the District Court on January 28, 1975, well within the four (4) year Statute of Limitations provided by the California State Law, 337(1),C.C.P.

The controlling Statute of Limitations in the State of California in Petitioner's Title 42, U.S.C., 1981 Cause of Action is not affected by the Statutes of Limitations in states of Nebraska, Colorado, and Tessessee, as Petitioner's Cause of Action commenced and happened in the State of California. Petitioner was a resident of the State of California when the Cause of Action begin, and still remain a resident



in the State of California. Respondents are located, and, has been always located in the State of California.

The California Legislature and the good Citizens of the State of California have have NOT included in any California Statute whereby, the Statute of Limitations of a Civil Rights Action be included in 338(1) C.C.P., "A Liability Created by Statute."

Therefore, the California Code of Civil Procedure, Section 337(1), is the most appropriate State Law controlling the Statute of Limitations in the Title 42, U.S.C., Section 1981 Cause of Action, which is four (4) years.

## III

## REMEDIES AVAILABLE, USED IN PETITIONER'S CAUSE OF ACTION ARE SEPARATE, DISTINCT, AND INDEPENDENT

In November, 1971, Petitioner filed a Petition for a Writ of Mandate, not a breach of contract, in the Los Angeles County Superior Court.

Petitioner filed a Complaint For Discriminatory Breach of Contract For Damages, in the Federal District Court on January 28, 1975.

On January 21, 1976, Petitioner filed the Motion For Leave To File Amended Complaint, in the Federal District Court.

As a result of the discovery of material newly discovered evidence of Racial Discrimination; Petitioner, pursuant to Rule

15(b), Title 28, Federal Rules of Civil Procedure, filed the Motion For Leave To File Amended Complaint, to conform to the evidence by striking Section 1983 from the Original Complaint.

Respondents have sought to persuade this Court to conclude that Section 1981, and Section 1983 are the same in respect to remedies.

Also, as a result of Petitioner filing a Petition for a Writ of Mandate in the Los Angeles County Superior Court on November 17, 1971, Respondents have concluded the following:

> "4. Even if Petitioner were successful at this he would still be faced with the insurmountable barrier that his dispute with Respondents is barred by the doctrine of res judicata."

The remedies available, and used by Petitioner in his Cause of Action in Petition for a Writ of Mandate, Section 1983, and Section 1981; although related, and although directed to most of the same ends; are separate, distinct, and independent.

The United States Court of Appeals, Third Circuit, in 1971, held:

> "We conclude that nothing in Title VII of the Civil Rights Act of 1964 imposes any jurisdiction barrier to suit brought under Section 1981 charging discrimination in private employment." Young v. International



Telephone & Telegraph Co., 438 F.2d 757 (1971).

This United States Supreme Court in Johnson v. Railway Express Agency, on June 19, 1975, ruled the followings, in pertinent parts:

> "Despite Title VII's range and its design as a comprehensive solution for the problem of invidious discrimination in employment, the aggreived individual clearly is not deprived of other remedies he possesses and is not limited to Title VII in his search for relief. The legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and applicable state and federal statutes. Alexander v. Gardner-Denver Co., 415 U.S., at 48. In particular, Congress noted "the remedies available to the individual under Title VII are coextensive with the individual (sic) right to sue under the provision of the Civil Rights Act of 1866, 42 U.S.C., Section 1981, and that the two procedures augment each other and are not mutually exclusive..."
>
> "But these are the natural effects of the choice Congress has made available to the claimant by its conferring upon him independent administrative and judicial remedies..."
>
> "We generally conclude, therefore,

> that the remedies available under Title VII and under Section 1981, although related, and although directed to most the same ends, are separate, distinct, and independent." Johnson v. Railway Express Agency, 421 U.S. 454, 462; 44 L.Ed. 2d 295, 95 S.Ct. 1716 (1975).

The above argument in this Reply Brief Addressed To Arguments First Raised in the Brief in Opposition reflects, and substantiate more fully why Part III of the Argument in Petitioner's Petition for a Writ of Certiorari, pages 38 through 48, "Why This United States Supreme Court Should Review Petitioner's Title 42, U.S. C., Section 1981 Cause of Action; and, Change The Decisions Of The Lower Court"; should be considered by this United States Supreme Court in order that Petitioner can, and will be afforded the "Due Process of Law, and the Equal Protection of the Laws" as prescribed by the 14th Amendment of Our United States Constitution.

## CONCLUSION

For the foregoing reasons, as more fully stated in Petitioner's Petition for a Writ of Certiorari, the Decisions of the Lower Courts should be reversed and remanded.

Respectfully submitted,

FLOYD H. DANIELS,

In Propria Persona